each other, would have to do her phone calls for her because she could not talk on the phone very well.

What a wonderful human being, John Glenn. I know there are other people wanting to speak. But I have to say a couple of things. He led a congressional delegation when I was a relatively new Senator. We went behind the Iron Curtain. I can remember going from Austria into Czechoslovakia, and the Communists had stopped the train we were on. They had dogs and they had these soldiers looking under the train and they went and looked at who we were.

But when things calmed down, one of the soldiers asked John Glenn for his autograph. He is a world-famous man and is a man of such humility. I want him to know, and everyone within the sound of my voice, he is one of the finest human beings I have ever met. He is a historical figure now and for all time in the United States.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I know Senator GRASSLEY is waiting and I am going to be brief. I thank him for his indulgence.

But when Senator SHERROD BROWN of Ohio came to the floor to speak of John Glenn, I could not help but stay, and I am glad I did. First, for those who were listening, the good news is we are celebrating his birthday. He is still alive and well, with Annie, and we are sure happy that is the case.

When I was just getting started in politics, 1982, I was running for Congress in Springfield, IL, and Senator John Glenn called and said: I am going to come and campaign for you. I cannot tell you how excited I was to meet him face to face in my hometown. He is truly an American hero. For all his service to the United States, a naval pilot, Marine pilot in World War II, in the Korean war, our first man into space, an astronaut who reprised his performance at the age of 77. He went back into space. It tells you what kind of person he is, his courage and his strength, his physical strength that he could do that.

I had the good fortune of being on the floor of the Senate for my orientation in 1996, and your predecessor, Mr. President, Senator Robert Byrd, would sit in that chair and tell all the new Members and their spouses the history of the Senate. I sat right over here, and Loretta sat next to me. At one point, Senator Byrd said: Open that desk drawer in front of you. You are going to see a great Senate tradition. Remember how the teachers told you, don't write on the desks. Well, the Senators never got the message.

Inside virtually every desk on this floor is the name of the Senator who sat in the desk, scratched in the wood by the Senator at the bottom of the drawer. He said, pull out the drawer on the desk and see whose name is in there. Sure enough, it was John Glenn's. It was his desk I was sitting at. Next to it was Paul Douglas, the man I worked for as a college intern, who inspired me to get started in public life. So I have that desk today. I am honored to have it and to have added my name to the desk drawer of these two great men.

I didn't realize at the time that not only would I be able to have this desk, but I would actually serve with John Glenn. I think there have been fewer than 1,300 men and women who have had the honor to be in the Senate. Many have vanished into history and will never be remembered for anything significant. That is not true of John Glenn. What he has done in his public life is set an example to everybody who aspires to this job. He literally risked his life for this country over and over. He is a humble, quiet, friendly person, and he is dedicated to Annie. The two of them have a relationship, as President Obama said, that is extraordinary in American life.

The fact that I got to know him, got to serve with him, and he helped launch me on this political journey I am on today is something I will never, ever forget. I wish John Glenn, our former colleague, a happy birthday, and thank him again and again for all the service he has given to this great Nation. He has made America a better place. I am honored to have been one of his colleagues.

The PRESIDING OFFICER. The Senator from Iowa.

JUDICIAL ACTIVISM

Mr. GRASSLEY. Mr. President, the Supreme Court earlier this month issued a very important decision which bothered me—a decision that I think shows that dissenters in this decision are judicial activists. It is important not only on the merits of the case but because it shows how this country is only one vote away from unprecedented judicial activism.

The Obama administration is encouraging this judicial activism. The Obama administration is taking legal positions that threaten the role of Congress as a coequal branch of our government. Those positions challenge the separation of power that is designed to protect the freedom of Americans, and even the right of people to govern themselves, which is the basis of representative government and the purpose of the Congress.

The United States happens to be a party to the Vienna Convention on Consular Relations. This treaty gives rights to the citizens of countries who are parties to that treaty to have access to their country's consular officials if they are arrested abroad. There are some foreign nationals in this country who were sentenced to death without those rights being respected. All of these death sentences appear to be valid under the American Constitution.

The story is complicated, but in 2008 the Supreme Court ruled that failure to comply with the treaty was not an obstacle to the execution of a foreign national who had been sentenced to death. This was the case even if the President ordered a State to allow the criminal to challenge his sentence in light of the treaty, and even if the criminal obtained a judgment from the International Court of Justice that his conviction violated international law. The Court said that Congress could pass legislation to make the treaty apply to people on death row who had not received consular access. We in the Congress have never passed such a law.

Now to the Supreme Court case that concerns me in light of this background on the consular relations treaty. In 1994, Humberto Leal Garcia, a Mexican national, kidnapped a 16-year-old girl, raped her, and bludgeoned her to death. He did not ask for access to the Mexican consul, and he did not receive access. He did not challenge his failure to receive consular access during his trial. Only after he brought State habeas corpus litigation did he raise this claim; and even then, he did not raise consular notification as an issue in his first habeas corpus petition.

Mr. Leal did obtain a ruling from the International Court of Justice that his conviction and sentence were obtained in violation of international law. The International Court of Justice ordered that he was entitled under national law to receive another review of his conviction and sentence, regardless of whether habeas law allowed him to raise such an issue. But that ruling is obviously not binding on American courts, as no country in the world, including the country of Mexico, enforces International Court of Justice rulings as part of its domestic law.

As his execution date approached, Mr. Leal sought a stay in the Supreme Court. Since Mr. Leal received a fair trial under American law, and there was no question concerning his guilt, his request should have been rejected, and rejected unanimously. But that is not what happened. He was executed, but the Supreme Court's ruling was shockingly close—5 to 4.

The Department of Justice, through the Solicitor General, Donald Verrilli, asked the Supreme Court to grant the stay. Its brief was truly astonishing. It did not argue that there was any doubt Mr. Leal was guilty. It did not say Mr. Leal had been harmed in any way by the Vienna Convention violation. It cited no case that provided an example where a stay had been issued in similar circumstances. It raised no arguments for the stay that were based on American law, because American law did not support a stay.

Instead, the Department of Justice relied on international law and made policy arguments. It argued that Mr. Leal's execution would create negative effects on America's international relations. It argued that his execution would violate our international legal obligations, and it argued that the mere introduction of legislation—understand this, just introducing a bill and at the same time having the support of the Obama administration—

should allow the Court to issue a stay to preserve its jurisdiction if time were given to allow the bill to be enacted. This is the position that worries me and threatens the role of Congress as a coequal branch of government.

Everyone knows bills are not laws. Bills are what we introduce. If we pass bills, they become law. The Founding Fathers made it very difficult to enact laws. There are two Houses of Congress, and each has to pass the same version of the bill and the President has to sign that bill or a supermajority of both Houses must override a veto.

This was done to protect the rights of the American people. Only if a bill passes through a specified process can a bill become a law. A court following the rule of law can only enforce what actually becomes a law. There may be times when an agency might pay attention to a bill that is introduced, but that is an agency. In the case of courts, a court should only apply what has actually become law—in other words, a bill passing both Houses of Congress, signed by the President—not pay attention to a bill that has just been introduced.

The Solicitor General's brief relied on a bill, not a law. The name of the bill is the Consular Notification Compliance Act. That bill would retroactively allow prisoners on death row whose Vienna Convention rights were violated yet another bite at the apple. If the bill passed, they would be able to delay their death sentences—lawful sentences under American law—with another round of judicial review for compliance with what? International law. Although the bill is strongly supported by the Obama administration, it has not passed, so it is not law, it is a bill. It is going to have a hearing soon, but it is not scheduled to be placed on the committee agenda for markup. It is clear there is no chance this Congress would pass a law that retroactively allowed foreign nationals who face lawful death penalties another round of judicial review based upon the Vienna Convention.

Congress simply will not pass a bill that gives Federal judges another opportunity to display their dislikes of the death penalty by delaying cases for no good reason. Only Congress can legislate. But the Obama administration argued in the Court that the Supreme Court should grant a stay, even though Congress has not legislated, simply because the executive branch strongly supported the bill, which theoretically—but only theoretically—could pass at some future time.

Do you know what disturbs me? Four Justices agreed with this outlandish position. There is absolutely no precedent for the position. These dissenters accepted an Obama position that was made out of whole cloth. When courts rule based on law, we have the rule of law. When they rule based upon policy preferences, we have judicial activism, not the rule of law.

The Obama administration asked for a stay based upon policy preferences, based on international law, and based on that administration's view that a bill it supports takes overwhelming precedence over a considered decision of Congress not to pass that legislation. Four Justices—just one short of a majority—were willing to disregard American law in favor of international law, and also in favor of policy implications, and also based upon a bill being introduced in Congress. This is not only inconsistent with the rule of law, it is a threat to American democracy. How extreme.

The American people, through their elected representatives, have enacted the death penalty and established limits on habeas corpus petitions that impede executions. The people's representatives—those of us in the Congress—also declined to enact a bill to implement the Vienna Convention. Notwithstanding that decision of the people's representatives, this administration and four Justices would have used an unpassed bill to delay a death sentence. How extreme. They would have had the courts not allow the preferences of the American people as expressed through their elected representatives but, instead, their own policy preferences. How extreme. But under our system of government, the results of the democratic process are entitled to prevail, unless the Constitution—and only the Constitution—clearly provides otherwise.

The position of the Obama administration and the four dissenting Justices also is harmful to American democracy in yet another way. If the American people dislike what Congress is doing, it is very simple. In the next election, they can elect new Representatives and Senators. They can ask that Federal judicial nominees be stopped or that laws be passed that overturn judicial decisions made under Federal law. But what are the American people to do if judges make decisions based on the views of foreign governments and international tribunals that are contrary to our very own law? What if judicial rulings are designed to enforce decisions of the International Court of Justice, rulings that are not binding as Federal law? Americans cannot influence the views of foreign governments or the rulings of international tribunals.

Had the Obama administration and the four dissenting Justices prevailed, the American people would have lost a part of the right to govern themselves. That right would have been replaced with "obedience without recourse" to foreign powers over whom our people exercise no voice. That is not the system the Founding Fathers bequeathed us.

The question of whether courts should apply American law or foreign law is of great concern to me and to other members of the Judiciary Committee, and maybe to a lot of Senators who aren't on that committee. Those of us on the committee have thought about this specific question long before this recent Leal case that has come, I guess within the last 3 weeks. And I have asked judicial and administration nominees about these very issues at their confirmation hearings.

For instance, just a few months ago, I posed a question to the nominee for Solicitor General, Mr. Verrilli, about an amicus brief he had filed on behalf of foreign nationals who had been sentenced to death. In that brief, Mr. Verrilli argued not that the prisoner's constitutional rights had been violated, but that "[i]t is in the interests of the United States and the world community that the legal standards of the United States should reflect and be informed by international human rights."

I asked Mr. Verrilli, were he confirmed, whether there were any circumstances in which he would argue before the Supreme Court in a death penalty case that the Court be "informed by international rights?" He responded:

> I will adhere to the view that foreign law, including international human rights law, has no authoritative force in interpreting the Constitution and laws of the United States, except in those rare instances where federal statutes incorporate or make international and/or foreign court decisions binding legal authority.

Responding to my question on the difference between international human rights and our own constitutional rights, Mr. Verrilli stated:

> International human rights are set forth in international treaties, conventions and customary international law. They are not binding and enforceable in the United States unless Congress has made them so.

The Leal case does not involve a Federal statute of the type Mr. Verrilli cited, nor does it concern any international standards binding and enforceable in the United States because Congress made them so. I believe Mr. Verrilli's brief as Solicitor General is very inconsistent with what he related during his confirmation hearing.

The brief relied on international human rights, and its only reference to American law was this bill that I have referred to—not a law, a bill—which, under our constitutional system, is as different from a law as night is from day.

I would also note that Mr. Verrilli stated during his confirmation hearing:

> If the Attorney General [or the President] directed that I take a position . . . one that I believe to be an indefensible view of the law, I would not lend my name or that of the Office of Solicitor General to carrying out the order, and would certainly resign rather than carry out the order.

Mr. Verrilli obviously does not believe that reliance solely on international law and a bill is an indefensible view of the law. I disagree with him on that point.

Similarly, during her confirmation hearing, Justice Sotomayor was asked about the application of foreign or American law. She was one of these dissenters. She stated:

> I do not believe foreign law should be used to determine the result under constitutional

law or American law, except where American law directs.

In the Leal case, foreign law should not have been used to resolve the case because American law did not direct that foreign law apply.

When Justice Kagan appeared for her confirmation hearing, she stated that in deciding cases, "you're looking at law all the way down, not your political preferences, not your personal preferences."

However, the law in the Leal case is clear. Executive branch policy arguments and unenacted bills are not law.

I am not saying the Solicitor General or these Justices who dissented lied at their confirmation hearings or made a mockery of the confirmation process, but Judiciary Committee members foresaw cases such as Leal and asked the nominees to address the role of foreign law in constitutional cases. I believe, although they do not, what these individuals wrote in the Leal case is inconsistent with what they said at the time of their confirmation hearings.

Finally, one of these issues could arise again in a different legal context. Like the death penalty cases, there is ongoing litigation challenging the constitutionality of the Defense of Marriage Act. Like the death penalty cases, the Defense of Marriage Act is the subject of a bill. The particular bill—called the Respect for Marriage Act—notwithstanding its Orwellian name, would repeal the Defense of Marriage Act.

The Department of Justice has already decided not only to defend the Defense of Marriage Act but now argues the Defense of Marriage Act is unconstitutional. The Department, in light of its Leal brief, may be considering making the implausible argument the courts should strike down the Defense of Marriage Act simply because a bill has been introduced to repeal it—the same argument used in the Leal case before the Supreme Court.

You might well argue the introduction of a bill that is strongly supported by the administration is enough to lead courts to believe the Congress has already repealed the law anyway, so why not have the Court simply declare the law unconstitutional. The Department should not make such an argument, and I can tell the courts that, like the bill to make the Vienna Convention apply retroactively to convicted criminal defendants who face the death penalty, this Congress will not—and I repeat, will not—pass the Respect for Marriage Act and courts should not consider its introduction in resolving DOMA's constitutionality.

Mr. President, obviously, I am disappointed the Obama administration has advanced policy arguments rather than legal arguments in the Supreme Court. How ridiculous it is to try to convince the Supreme Court that just because a bill is introduced they ought to make a decision based upon that bill being introduced.

In the absence of arguments based on American law, it should not have asked the Court to rule based on policy. Rather, it should have either argued based on American law—even if American law did not conform to its view of desirable policy—or it should have declined to participate in the case.

I am also disappointed that four Supreme Court Justices voted to advance their views of policy rather than law, which is the essence of judicial activism. We were—or you could say we are—only one vote away from a Supreme Court majority that would have applied policy preferences in favor of international law rather than American constitutional law. We were only one vote away from a Supreme Court majority that would have usurped the separation of powers by considering a bill to be the same as a law that Congress passed. And we were only one vote away from a Supreme Court majority that would have applied the ruling of an international tribunal over which Americans have no say rather than a body—as in this Congress of the United States—that is representative of and answers only to the American people.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BLUMENTHAL). Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators allowed to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

HONORING OUR ARMED FORCES

SPECIALIST NICHOLAS P. BERNIER

Mrs. SHAHEEN. Mr. President, I rise today with deep sadness to pay tribute to the service and sacrifice of Army SPC Nicholas P. Bernier, who died on June 25, 2011, from injuries sustained during combat in Kherwar, Afghanistan, while supporting Operation Enduring Freedom. Specialist Bernier was a combat medic with Headquarters, Headquarters Company, 2nd Battalion, 30th Infantry Regiment, 4th Brigade Combat Team, 10th Mountain Division based out of Fort Polk, LA.

A native of East Kingston, NH, and 2007 graduate of Exeter High School, Nicholas or Nick, as he was called by those who knew him, enlisted in the U.S. Army shortly after graduation. Prior to his deployment to Afghanistan in October 2010, Nick provided medical care in Texas to wounded soldiers who had returned from overseas.

From a very young age, Nick stood out in his tight-knit community for his desire to help others. It was, therefore, no surprise to his friends and family when he answered the call to serve his country, to protect his fellow Americans, and to care for his brothers in arms as a medic on the frontlines in Afghanistan. This last assignment was, in fact, a natural fit for him.

Our Nation can never adequately thank Nick for his willingness to serve and to make the ultimate sacrifice defending the freedoms we hold dear. While words provide little comfort at such a time as this, I hope Nick's family will find some solace in the deep appreciation all Americans share for Nick, for the life he lived and for the ultimate sacrifice he made in the service of others. He was a true American hero.

Nick is survived by his parents, Paul Bernier of East Kingston, NH, and Tina Clements of Haverhill, MA; two brothers, Bradley and Christopher, and half-sister, Brittany. He also leaves behind a caring extended family and a community that loved him.

I ask my colleagues and all Americans to join me in honoring the life, service, and sacrifice of SPC Nicholas P. Bernier.

ADDITIONAL STATEMENTS

TRIBUTE TO ASSISTANT SECRETARY INÉS R. TRIAY

• Mrs. MURRAY. Mr. President, it is with great privilege that today I honor and express my thanks to Dr. Inés Triay, Assistant Secretary for Environmental Management at the Department of Energy for her service to our country.

The Environmental Management Program at DOE has consistently been a priority for me during my tenure in the Senate, as Washington State is home to the Hanford Nuclear Reservation. As a part of the Manhattan Project, Hanford produced plutonium from 1944 until 1987, and the efforts of Hanford workers and the Tri-Cities community helped end World War II.

Today, under the leadership of Dr. Triay, Hanford workers are involved in an environmental cleanup project of enormous scale necessitated by the processes required to transform raw uranium into plutonium for bombs. These processes generated billions of gallons of liquid waste and millions of tons of solid waste which must now be cleaned up, removed, or remediated. Dr. Triay and her staff have worked closely with both the Richland Operations Office and the Office of River Protection to ensure cleanup efforts at Hanford continue to move forward in a meaningful and timely fashion.

Inés has devoted her career to the safe and timely cleanup of radioactive waste and facilities from our Nation's Cold War nuclear weapon production and research sites. Inés, a Cuban-born